BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

DIANE E. TIMMONS	)	
Claimant	)	
VS.	)	
	)	Docket No. 227,781
WESTERN RESOURCES	)	
Respondent	)	
Self-Insured	)	

ORDER

Respondent appeals from the preliminary hearing Order of Administrative Law Judge Floyd V. Palmer dated November 3, 1997, wherein Judge Palmer granted claimant benefits finding her accidental injury had arisen out of and in the course of her employment with respondent.

ISSUES

Whether the claimant suffered accidental injury arising out of and in the course of her employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After having reviewed the evidence in the record, the Appeals Board finds, for preliminary hearing purposes, as follows:

The Administrative Law Judge granted claimant benefits in the form of medical treatment with Dr. Sharon McKinney after having found that claimant's accidental injury arose out of and in the course of her employment with respondent. The accident occurred on August 14, 1997, when claimant and a co-worker left the building on their break. Claimant and the co-worker went for a short walk while claimant purchased Rolaids from Zerchers and then returned to respondent's building at 10th and Quincy. While walking

up a handicapped ramp regularly used by the general public, claimant tripped and fell suffering accidental injury.

The facts in this case are for the most part undisputed. However, respondent does contend that claimant's walk was for the purpose of purchasing the Rolaids while claimant contends that the walk was in part related to respondent's wellness program which had been started in order to encourage respondent's employees to exercise regularly. This exercise program included walking during breaks. However, respondent contends in this instance that claimant's walk of slightly over one-and-a-half blocks would not constitute a wellness walk, but was, instead, a personal errand off respondent's premises.

In proceedings under the Workers Compensation Act, it is claimant's burden to establish claimant's right to an Award of compensation approving the various conditions upon which claimant's right depends by preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 44-508(g), as amended.

In order for claimant to collect workers compensation benefits under the Workers Compensation Act, she must suffer accidental injury arising out of and in the course of her employment. The phrase "out of employment" points to the cause or the origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises, "out of" employment when it is apparent to the rational mind, upon consideration of all circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury. An injury arises "out of" employment if it arises out of the nature, conditions, obligations and incidence of the employment. Newman v. Bennett, 212 Kan. 562, 512 P.2d 497 (1973).

The phrase "in the course of" employment relates to the time, place and circumstances under which the accident occurred and means the injury happened while the workman was at work in his employer's service. Hormann v. New Hampshire Insurance Company, 236 Kan. 190, 689 P.2d 837 (1984).

The Appeals Board finds, claimant has failed to prove accidental injury arising out of and in the course of her employment. The fact that respondent has created a wellness program which encourages employees to walk during their breaks, does not make a one-and-a-half block walk for the purpose of purchasing Rolaids part of claimant's employment. The wellness program, while offering minor rewards such as water bottles, etc., did not provide any financial incentive for the employees of respondent. In addition, the walk described by claimant was a very brief one-and-one-half block walk which would provide relatively little wellness benefit. In addition, claimant acknowledged that she was not wearing walking shoes but instead was wearing normal office flats which she would wear at her work station. All the above indicates that claimant's purpose on the walk was to obtain Rolaids rather than create any additional wellness benefits for herself. Claimant admitted that she had had heartburn since lunch and was in search of antacids in order to relieve her condition.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of the Administrative Law Judge Floyd V. Palmer dated November 3, 1997, should be, and hereby is, reversed and claimant is denied benefits as a result of the alleged accidental injury of August 14, 1997.

IT IS SO ORDERED.

Dated this ____ day of December, 1997.

BOARD MEMBER

c: Roger D. Fincher, Topeka, KS
Gary E. Laughlin, Topeka, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director